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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,938	12/15/2003	Joseph John Fatula JR.	SJ0920030067US1	3722
45216	7590	05/19/2008		
Kunzler & McKenzie 8 EAST BROADWAY SUITE 600 SALT LAKE CITY, UT 84111			EXAMINER TAYLOR, NICHOLAS R	
			ART UNIT 2141	PAPER NUMBER
			MAIL DATE 05/19/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. Claims 1-9 and 20-35 were presented for examination and are rejected.

Response to Arguments

2. Applicant's arguments filed April 7th, 2008, have been fully considered but they are deemed not persuasive.

3. In the remarks, Applicant argued in substance that:

(A) The prior art of Fu fails to teach a system prediction policy. The references to Fu with respect to predictable performance, behavior, and function do not provide a sufficient basis to support a system prediction policy (see Introduction, paragraph 2, section 2.3, and section 4). Further, the oversubscription process described in Fu also fails to teach a system prediction policy, as it merely refers to the relationship of how many tickets are issued with respect to the available resources. At best, this is addressed to increasing unpredictability rather than predictability.

As to point (A), the claim language requires that "wherein the plurality of system policies comprises a system prediction policy." Fu teaches the use of a system prediction policy (Fu, see overview of pg. 134, paragraphs 2 and 3; see section 2.2 discussing predictive policies where resource use is anticipated). Fu teaches the use, *inter alia*, of probabilities to implement policies that predict future system performance

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and act accordingly (e.g., section 2.2). Applicant appears to be relying on a narrow reading of the language "prediction" as requiring more than a "best-effort" attempt at predicting future system behavior. Stated otherwise, any element of unpredictability or inaccuracy in a prediction policy would prevent a policy from reading on the present claim language. The examiner respectfully asserts that Fu teaches a prediction policy that reads on a broadest reasonable interpretation of the term "system prediction policy" as stated in the claim.

Claim Rejections - 35 USC § 103

4. The rejections under 35 U.S.C. 103(a) as applied to claims 1-9 and 20-35 are unchanged and are recited in the previous FINAL office action.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Taylor whose telephone number is (571) 272-3889. The examiner can normally be reached on Monday-Friday, 8:00am to 5:30pm, with alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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/NT/
Nicholas Taylor
Examiner
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